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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 343

HAMBURG-AMERICAN LINE, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The judgment of the District Court was entered without an opinion (R. 13–14). The opinion of the Circuit Court of Appeals (R. 17–21) is reported in 65 F. (2d) 369.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 15, 1933. (R. 21–22.) The petition for a writ of certiorari was filed August 14, 1933, and was granted October 9, 1933. (R. 23.) The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a fine may be imposed upon a steamship company, under Section 16 of the Immigration Act of 1924, for bringing to the United States an alien who had previously been lawfully admitted to the United States and was returning from a temporary visit abroad but who possessed neither an immigration visa nor a reentry permit in lieu thereof, the Secretary of Labor, notwithstanding this fact, having permitted the alien to enter.

STATUTES AND REGULATIONS INVOLVED

The applicable portions of the statutes and regulations involved are set forth in the Appendix, *infra,* pp. 21–26.

STATEMENT

The petitioner, alleging three causes of action, brought suit in the District Court for the Southern District of New York to recover three fines imposed upon it by the Secretary of Labor. The second and third causes of action were decided in favor of the petitioner and have no relation to the instant case. The first cause of action arose out of the imposition, by the Secretary of Labor, of a fine under Section 16 of the Immigration Act of 1924, for bringing to the United States an immigrant who possessed neither an immigration visa nor a reentry permit. The case was submitted to the District Court upon the petitioner's motion for judgment on the pleadings. (R. 12–13.) The pleadings disclose that the following facts were undisputed (R. 2–4, 10):

On October 22, 1928, the petitioner, a foreign corporation, brought to the United States in its steamship *Deutschland* an alien named Philip O'Reilly (R. 2). The alien had left the United States on or about June 18, 1928, and was returning to his residence in the United States after a temporary visit abroad (R. 3). Upon his arrival in the United States the alien was ordered excluded and deported as a nonquota immigrant not in possession of any immigration visa (R. 2). The petitioner, who was advised that the facts appeared to warrant the imposition of a fine of $1,000, together with $140 for the return of the alien's passage money, filed a protest with the Secretary of Labor and submitted evidence to show that this fine should not be imposed (R. 2). On examination, the alien stated that he had forgotten to obtain a reentry permit (R. 3). Thereafter, the Secretary of Labor admitted the alien, but imposed a fine of $1,000 upon the petitioner for having brought to the United States an alien not in possession of an immigration visa or reentry permit (R. 3). The fine of $140 representing the passage money paid by the alien was not exacted (R. 3). The petitioner paid the fine of $1,000, under protest, to the Collector of Customs at the Port of New York (R. 3).

The District Court gave judgment for the United States on the pleadings (R. 13–14). The Circuit Court of Appeals affirmed (R. 22).

SUMMARY OF ARGUMENT

I

Section 16 of the Immigration Act of 1924 directs the imposition of a fine upon a carrier who brings to the United States an immigrant not in possession of an unexpired immigration visa. Since the alien O'Reilly was beyond question an immigrant within the meaning of the Act, the fine was properly imposed.

The Circuit Court of Appeals in *Rederiaktiebolaget Nordstjernen* v. *United States,* 61 F. (2d) 808, reached the opposite conclusion on the ground that a returning resident alien is not required to have a visa, but only a reentry permit, and the Act does not penalize a carrier for bringing in an alien who has no reentry permit. We submit that this decision is erroneous. Generally speaking, every immigrant is required to have an immigration visa. While a returning resident may present a reentry permit in lieu of a visa, he must be in possession of either one or the other. Consequently, if he has no permit he must present a visa, and if he has neither the carrier must be fined for bringing to the country an immigrant not in possession of an immigration visa.

II

Had the alien been excluded, as he might well have been (*United States ex rel. Polymeris* v. *Trudell,* 284 U.S. 279), the petitioner would clearly have been subject to a fine. The fact that he was

admitted, apparently under some discretionary authority residing in the Secretary of Labor, does not excuse the carrier. The fine accrued when the alien was brought in, or, at the latest, when he was ordered excluded and deported by the immigration inspectors, and the Secretary was without power to remit the fine unless it appeared that the carrier did not know and could not have ascertained that the alien was an immigrant. There is no suggestion that the petitioner was ignorant of that fact. Moreover, Section 13 (f) of the 1924 Act expressly declares that admission of an alien who is subject to exclusion shall not toll the fine. This section does not, as the petitioner contends, indicate that a fine cannot accrue if the alien is admitted, but, on the contrary, tends to show that in such cases the fine does accrue and may not be remitted. Cases cited in support of the contention that admission tolls the fine are not in point, since they involved statutes which made admissibility the test of the legality of the carrier's action and contained no provision analogous to Section 13 (f).

The argument that because the alien could be admitted in the discretion of the Secretary of Labor the carrier should not be fined for bringing him within the Secretary's jurisdiction seems to have been settled adversely to the petitioner in cases recently decided. The 1924 Act gives the carrier no greater immunity in this respect than did the statutes under consideration in those cases.

The fact that there was not imposed that portion of the fine representing the passage money paid by the immigrant does not invalidate the other part of the fine, which was properly imposed. Nor does the inclusion of the passage money as part of the fine prescribed by statute indicate that no fine should be imposed when the alien is admitted. Section 13 (f) contemplates the imposition of a fine in cases where the immigrant is admitted. The court below rightly held that it could not have been the intention of Congress to compel the carrier to refund the passage money when the alien is admitted. But even if the fine be indivisible, the carrier cannot complain because it was fined less than was required by law.

ARGUMENT

I

THE IMMIGRATION ACT OF 1924 MADE MANDATORY THE IMPOSITION OF A FINE UPON THE PETITIONER FOR BRINGING INTO THE UNITED STATES AN IMMIGRANT NOT IN POSSESSION OF EITHER AN IMMIGRATION VISA OR A REENTRY PERMIT

Section 16 of the Immigration Act of 1924 (*infra*, p. 24) provides in clear and unmistakable terms for the imposition of a fine upon a steamship company when it appears to the satisfaction of the Secretary of Labor that the company has brought into the United States an immigrant not in possession of an unexpired immigration visa. Nor may this fine be remitted or refunded unless the Secretary is satisfied that the carrier could not by

the exercise of reasonable diligence have ascertained that the person transported was an immigrant. An immigrant is defined in Section 3 of the Act (*infra*, p. 21) as "any alien departing from any place outside the United States destined for the United States," with certain exceptions not pertinent here, and in Section 4(b) (*infra*, p. 21) an alien who has previously been lawfully admitted to the United States and who is returning from a temporary visit abroad is classified as a non-quota immigrant. Since the alien O'Reilly was beyond question an immigrant within the meaning of the Act and was not in possession of an immigration visa, we submit that the imposition of the fine was plainly required by law.

In *Rederiaktiebolaget Nordstjernen* v. *United States*, 61 F. (2d) 808 (C.C.A. 9th), it was held on facts substantially identical with those involved here that a returning alien is not required to have an immigration visa, but only a reentry permit, and that inasmuch as the Act does not penalize a carrier for bringing in a returning alien not in possession of a permit, the fine was improperly imposed. We submit that this decision is clearly erroneous. Section 13(a) of the Act provides that no immigrant shall be admitted to the United States unless he is in possession of an unexpired immigration visa. The only exception to this requirement is found in subdivision (b) of the same section, which states that "in such classes of cases and

under such conditions as may be by regulations prescribed" immigrants who have been previously admitted and who depart temporarily may be readmitted without presenting immigration visas. In enacting this subdivision Congress evidently had in mind, among other things, the provisions of Section 10 (*infra*, p. 22) authorizing the issuance of a reentry permit to an alien resident contemplating a temporary visit abroad, and intended that in certain cases to be specified in the regulations a returning alien should be permitted to present a reentry permit in lieu of an immigration visa.

Section 10 is, however, permissive rather than mandatory and was designed to afford the alien resident a convenient means of identifying himself as such and to save him the trouble and delay incident to the procuring of an immigration visa from a consulate abroad.[1] Taken by itself, it does not

[1] The purpose of a reentry permit was explained in House Report No. 350, 68th Cong., 1st Sess., p. 18, as follows:

"Provision is made for the issuance by the Commissioner General of Immigration of permits to aliens permanently domiciled in the United States who desire to go abroad and return after temporary absence. The permit to reenter may be issued upon application by the alien with payment of fee of $6; it will be valid for six months with privilege of renewal; will identify the alien; but there will be no obligation upon the alien to obtain or carry it. It will be of value only as evidence that the alien to whom it is issued is returning from a temporary visit abroad. This provision is made solely for the convenience of the alien."

In a bulletin entitled *General Information Concerning United States Immigration Laws*, published by the Depart-

modify in any way the general rule laid down in Section 13 (a) that every immigrant must have an immigration visa in order to be admitted. The sole statutory provision relaxing this rule appears in Section 13 (b), and the regulations promulgated pursuant to that section (*infra*, pp. 25–26) specify three classes of immigrants who may be admitted without presenting immigration visas: (1) alien residents returning from a temporary visit of not more than six months to certain places in the northern half of the western hemisphere; (2) alien residents returning from a temporary visit to any other foreign country who are in possession of a permit to reenter issued in accordance with Section 10 of the Act; and (3) children born subsequent to the issuance of an immigration visa to the accompanying parent. See also Executive Order No. 4813 of February 21, 1928 (*infra*, p. 26).

It is clear, therefore, that under the Act and the regulations every immigrant must be in possession of an immigration visa unless he can bring himself within one of the three categories mentioned above. There is no suggestion that O'Reilly came from one of those places as to which neither a visa nor a permit is required. It is clearly to be inferred that he was returning from some "other

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ment of Labor, May 1, 1933, it is stated (p. 8) that possession by an alien of a reentry permit "absolves him from obtaining an immigration visa for the return journey to the United States."

foreign country," probably Ireland. In so far as is pertinent here, the strict requirement that an immigration visa be presented is waived only in the event the alien is able to display a reentry permit. Since O'Reilly had neither a visa nor a permit, the fact that he might have obtained a permit and failed to do so is of no significance with respect either to his admissibility or to the liability of the petitioner to pay a fine.

The fine was imposed, not for bringing in an alien lacking a permit to reenter, but for bringing in an alien not in possession of an immigration visa. Section 16, providing for the imposition of fines upon steamship companies, says nothing as to reentry permits. Indeed, it was not necessary that anything should be said about such permits, for it was the manifest intention of Congress that a fine should be imposed only in cases where the alien is required by the Act or the regulations lawfully promulgated under the Act to be in possession of an immigration visa. If O'Reilly had had a permit he would not have been required to present also a visa, and consequently the petitioner could not have been fined for bringing him in. Since he had no permit, he was required to have a visa, and for bringing him in without a visa the petitioner was, we submit, properly fined.

It is not perceived in what manner the Circuit Court of Appeals for the Ninth Circuit in the *Rederiaktiebolaget Nordstjernen* case disposed of

the regulations referred to above. It may well be that the court did not examine the pertinent regulations, for it refers to the regulations of July 1, 1925, as being in force, whereas the regulations of March 1, 1927, should have been applied. See *United States* v. *Day,* 21 F. (2d) 852 (S.D.N.Y.). In any event, the reasoning of that court, if carried to its logical conclusion, would mean that a carrier could not be fined for bringing to the United States a returning alien resident having neither a permit nor a visa even though the alien was excluded and deported. We submit that this erroneous interpretation of the Act and the regulations was properly rejected by the court below.

II

THE LEGALITY OF THE IMPOSITION OF THE FINE IS NOT AFFECTED EITHER BY THE ULTIMATE ADMISSION OF THE IMMIGRANT OR BY THE REMISSION OF A PART OF THE FINE EQUIVALENT TO THE AMOUNT PAID BY THE IMMIGRANT FOR HIS PASSAGE TO THE UNITED STATES

The petitioner admittedly brought to the United States an alien returning from a temporary visit abroad and having in his possession neither an immigration visa nor a reentry permit in lieu thereof. In these circumstances the alien might properly have been excluded. *United States ex rel. Polymeris* v. *Trudell,* 284 U.S. 279. See Immigration Rules of March 1, 1927, Rule 3, Subdiv. I, Par. 2, *infra,* p. 26. Had the Secretary of Labor ordered him excluded and deported and fined the petitioner

for its obvious violation of the law, there can be no doubt that the fine would have been properly imposed. See *Elting* v. *North German Lloyd,* 287 U.S. 324; *Lloyd Sabaudo Societa* v. *Elting,* 287 U.S. 329

The petitioner insists, however, that because the alien was unconditionally admitted by the Secretary of Labor it was not subject to a fine. This contention, we submit, fails to give effect to the plain language of the Act. Section 16, as has been observed, imposes a fine upon any carrier who brings to this country an immigrant not in possession of an immigration visa. As has been shown in Point I, *supra,* such a visa was required of the immigrant here. Consequently, at the moment when the petitioner brought O'Reilly into the United States without a visa, or a permit in lieu thereof, it violated the Immigration Act of 1924, and liability to fine accrued. See *Elting* v. *North German Lloyd,* 287 U.S. 324, *supra,* p. 328. There remained only the possibility that the Secretary of Labor might exercise some discretion vested in him and remit the fine. But his discretion in this respect is strictly limited by the Act itself. Under subdivision (c) of Section 16 he is without authority to remit or refund the fine unless it appears to his satisfaction that the carrier could not, by the exercise of reasonable diligence, have ascertained that the person transported was an immigrant. Since it was perfectly apparent that the alien here was an immi-

grant, and the petitioner has not even suggested that it was ignorant of the fact, much less that it could not have ascertained it, the Secretary had no authority to remit the fine.

Any doubt that might exist as to the correctness of this interpretation of the statute is dispelled by Section 13 (f), which provides that nothing in Section 13 shall authorize the remission or refunding of a fine, liability to which has accrued under Section 16. Admittedly, the alien O'Reilly came within none of the exceptions specified in the regulations promulgated under Section 13 (b) which would have authorized his admission without an immigration visa. It is said that he was admitted by the Secretary of Labor under discretion vested in him by Section 13 (b). This may well be so, although the record fails to disclose under what authority the Secretary purported to act, and it is to be observed that the rules adopted pursuant to that section make no mention of such discretionary power.[2]

[2] Rule 3, Subdivision I, Paragraph 5 of the Immigration Rules of March 1, 1927, provides that—

"Where an immigrant claiming a nonquota status fails to satisfactorily establish such status in the manner required by this subdivision, he shall be held for examination in relation thereto by a board of special inquiry."

The board of special inquiry referred to in this paragraph is evidently a board created pursuant to Section 17 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 887, which provides for appeals from decisions of such boards to the Secretary of Labor. It was apparently through this procedure that the alien was admitted in the instant case. (R. 3.)

It is intimated by the court below (R. 20) that possibly the immigrant was not lawfully admitted. If that were so, the illegal admission could, of course, lend no strength to the petitioner's position; there would then be no doubt as to the fine having been properly imposed. Assuming, however, that the Secretary did possess discretionary power to admit the alien, it is apparent that such power was derived from Section 13 (b), since there is no other provision in the statute upon which the power could rest. Consequently, Section 13 (f) is applicable and precludes remission of the fine.

In its brief in support of the petition for a writ of certiorari (pp. 16–18) the petitioner contends that the fine never accrued, within the meaning of Section 13 (f), because of the fact that the alien was ultimately admitted. As stated above, it is our position that the fine accrued when the alien was brought into the country, or, at the latest, when he was ordered excluded and deported by the immigration inspectors as an immigrant not in possession of a visa. (R. 2.) Subsequent proceedings could bear only upon the right of the petitioner to secure remission of the fine. Subdivision (f) obviously has reference to the other provisions of Section 13 authorizing admission of an alien who lacks the formal documents usually required. It contemplates that in some instances liability to fine will accrue under Section 16 in spite of the fact that the alien is ultimately admitted, and declares,

in effect, that admission shall not carry with it remission of a fine thus accrued. We submit, therefore, that subdivision (f) does, contrary to the petitioner's contention, have a bearing on the interpretation of Section 16, and that it indicates that admission of the alien under the discretionary authority conferred on the Secretary by other subdivisions of Section 13 is of no significance with respect to accrual of a fine. Furthermore, it would seem to have been expressly designed to prohibit remission of fines in cases in which such discretionary power has been exercised.

As we construe the statute, there is no inconsistency in holding that a fine is properly imposed when a resident alien who has neither an immigration visa nor a reentry permit is admitted, although no fine is imposed when the alien is in possession of a reentry permit. True, the authority to admit an alien who presents a permit in lieu of a visa is found in Section 13, and accordingly the petitioner contends that on the Government's theory subdivision (f) of that section would necessarily preclude remission of the fine in such cases. This argument overlooks the fact that subdivision (f) refers only to cases in which a fine has accrued under Section 16. There is ample justification for saying that when an alien is in possession of a reentry permit, although he has no visa, the carrier does not violate the law by bringing him in, because the Act when read as a whole discloses an intention on the part

of Congress to sanction the acceptance of a permit in lieu of a visa as *prima facie* evidence of the right to admission as a nonquota immigrant. On the other hand, there seems to be nothing in the Act indicating that Congress contemplated that admission of an alien by virtue of the Secretary's discretionary power would excuse the carrier when the alien had neither of the formal documents required. The manifest purpose of the Act was to compel immigrants to equip themselves with proper evidence of their admissibility before applying at a United States port for admission, largely in order to obviate the disappointment and hardship incident to exclusion upon completion of the journey. Section 16 was designed to implement this purpose by forcing carriers to refuse transportation to immigrants who lack the necessary documents. The carrier's offense is not mitigated by admission of the alien in the Secretary's discretion. That is a matter which concerns the alien alone. Moreover, admission of an alien who presents a reentry permit is not a matter of discretion in the same sense that admission in the absence of either a visa or a permit is discretionary. In so far as the quota requirements are concerned, the effect of a reentry permit appears to be no different from that of a nonquota visa; both are merely *prima facie* evidence of the alien's nonquota status, and in any case admissibility can be finally determined only when the alien

presents himself at a United States port. We submit, therefore, that there is no analogy between the instant case and a case in which the alien presents an unexpired reentry permit, and that the fact that no fine accrues in the latter case has no bearing on the question whether a fine accrued here.

The petitioner cites *Norddeutscher Lloyd* v. *United States,* 213 Fed. 10 (C.C.A. 2d); *Lloyd Sabaudo Societa* v. *Elting,* 45 F. (2d) 405 (S.D. N.Y.); *North German Lloyd* v. *Elting,* 48 F. (2d) 547 (C.C.A. 2d); and *Compagnie Generale Transatlantique* v. *United States,* 51 F. (2d) 1053 (C.C.A. 2d), as supporting its contention that admission of the alien tolls the fine. The statutes under consideration in those cases seem to make inadmissibility the occasion for imposing the fine, whereas under the Immigration Act of 1924 the fine is imposed for bringing into the United States an immigrant not in possession of a proper visa. In any event, whether those decisions correctly state the law need not be considered, for the statutes there involved contain no provision analogous to subdivision (f) of Section 13 of the 1924 Act. The court below said with respect to those cases (R. 20):

> Thus our decisions are inapplicable, which have intimated, if they did not decide, that in other situations the admission of the alien tolls the fine. * * * That may well be true when the statute does not say otherwise, but not here.

The petitioner also contends that since the alien could be admitted in the discretion of the Secretary of Labor it should not be fined for bringing him here in order that the discretion of the Secretary might be invoked. It seems to have been settled, however, that even under the Immigration Act of 1917 and the Quota Act of 1921 the carrier could not excuse its action on this ground. *Elting* v. *North German Lloyd,* 287 U.S. 324, 327, 328; *North German Lloyd* v. *Elting,* 48 F. (2d) 547, *supra; Compagnie Francaise de Navigation a Vapeur* v. *Elting,* 66 F. (2d) 536 (C.C.A. 2d), certiorari denied November 13, 1933, No. 510, October Term, 1933; *Transatlantica Italiana* v. *Elting,* 66 F. (2d) 542 (C.C.A. 2d), certiorari denied November 13, 1933, No. 497, October Term, 1933; *Cosulich Societa Triestina di Navigazione* v. *Elting,* 66 F. (2d) 534 (C.C.A. 2d). See also *Lamport & Holt, Ltd.* v. *Elting.* 64 F. (2d) 93 (C.C.A. 2d). The Immigration Act of 1924 certainly gives the carrier no greater immunity in this respect.

It is further suggested that the fine imposed upon the petitioner did not conform to the statute because an amount representing the passage money paid by the immigrant was remitted, and reference is made to certain decisions in which it was said that the requirement that the carrier refund the fare tends to show that no fine was intended to be imposed when the alien is admitted. *Norddeutscher Lloyd* v. *United States,* 213 Fed. 10, *supra;*

Lloyd Sabaudo Societa v. *Elting,* 45 F. (2d) 405, *supra; North German Lloyd* v. *Elting,* 48 F. (2d) 547, *supra; Compagnie Generale Transatlantique* v. *United States,* 51 F. (2d) 1053, *supra.* Undoubtedly in the majority of cases involving the imposition of fines under Section 16 the immigrant who lacks a proper visa is excluded and deported. As has already been observed, however, Section 13(f) contemplates that in some instances the alien will be admitted despite his failure to comply with the formal requirements, and declares that in such cases the fine shall not abate. The inference sought to be drawn from the inclusion of the passage money as part of the fine cannot prevail against the express provisions of 13(f). It becomes necessary, therefore, to choose between regarding the fine as divisible and levying the full amount even when the immigrant has been permitted to enter. The court below said (R. 21):

> As it is incredible that Congress should have intended to impose the return passage money when the alien stopped here, we choose the alternative.

We submit that this is a reasonable and permissible interpretation of the statute. If, on the other hand, the fine must necessarily be considered indivisible, its imposition would still be mandatory, and the petitioner cannot complain because the Secretary exacted an amount less than that required by law.

CONCLUSION

The decision of the court below should be affirmed.

Respectfully submitted.

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DECEMBER 1933.

APPENDIX

The Immigration Act of 1924, c. 190, 43 Stat. 153, 154, 155, 158, 161, 162, 163 (U.S.C., Title 8, Secs. 203, 204, 210, 213, 216) provides in part:

DEFINITION OF "IMMIGRANT"

SEC. 3. When used in this Act the term "immigrant" means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.

NONQUOTA IMMIGRANTS

SEC. 4. When used in this Act the term "non-quota immigrant" means—

* * * * *

(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad;

* * * * *

PERMIT TO REENTER UNITED STATES AFTER TEMPORARY ABSENCE

Sec. 10. (a) Any alien about to depart temporarily from the United States may make application to the Commissioner General for a permit to reenter the United States, stating the length of his intended absence, and the reasons therefor. Such application shall be made under oath, and shall be in such form and contain such information as may be by regulations prescribed, and shall be accompanied by two copies of the applicant's photograph.

(b) If the Commissioner General finds that the alien has been legally admitted to the United States, and that the application is made in good faith, he shall, with the approval of the Secretary of Labor, issue the permit, specifying therein the length of time, not exceeding one year, during which it shall be valid. The permit shall be in such form as shall be by regulations prescribed and shall have permanently attached thereto the photograph of the alien to whom issued, together with such other matter as may be deemed necessary for the complete identification of the alien.

* * * * *

(f) A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this section shall be construed as making such permit the exclusive means of establishing that the alien is so returning.

* * * * *

EXCLUSION FROM UNITED STATES

SEC. 13. (a) No immigrant shall be admitted to the United States unless he (1) has an unexpired immigration visa or was born subsequent to the issuance of the immigration visa of the accompanying parent, (2) is of the nationality specified in the visa in the immigration visa, (3) is a non-quota immigrant if specified in the visa in the immigration visa as such, and (4) is otherwise admissible under the immigration laws.

(b) In such classes of cases and under such conditions as may be by regulations prescribed immigrants who have been legally admitted to the United States and who depart therefrom temporarily may be admitted to the United States without being required to obtain an immigration visa.

* * * * *

(d) The Secretary of Labor may admit to the United States any otherwise admissible immigrant not admissible under clause (2) or (3) of subdivision (a) of this section, if satisfied that such inadmissibility was not known to, and could not have been ascertained by the exercise of reasonable diligence by, such immigrant prior to the departure of the vessel from the last port outside the United States and outside foreign contiguous territory, or, in the case of an immigrant coming from foreign contiguous territory, prior to the application of the immigrant for admission.

* * * * *

(f) Nothing in this section shall authorize the remission or refunding of a fine, liability to which has accrued under section 16.

* * * * *

PENALTY FOR ILLEGAL TRANSPORTATION

SEC. 16 (a) It shall be unlawful for any person, including any transportation company, or the owner, master, agent, charterer, or consignee of any vessel, to bring to the United States by water from any place outside thereof (other than foreign contiguous territory) (1) any immigrant who does not have an unexpired immigration visa, or (2) any quota immigrant having an immigration visa the visa in which specifies him as a nonquota immigrant.

(b) If it appears to the satisfaction of the Secretary of Labor that any immigrant has been so brought, such person, or transportation company, or the master, agent, owner, charterer, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each immigrant so brought, and in addition a sum equal to that paid by such immigrant for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival, such latter sum to be delivered by the collector of customs to the immigrant on whose account assessed. No vessel shall be granted clearance pending the determination of the liability to the payment of such sums, or while such sums remain unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such sums, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs.

(c) Such sums shall not be remitted or refunded, unless it appears to the satisfaction of the Secretary of Labor that such per-

son, and the owner, master, agent, charterer, and consignee of the vessel, prior to the departure of the vessel from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, (1) that the individual transported was an immigrant, if the fine was imposed for bringing an immigrant without an unexpired immigration visa, or (2) that the individual transported was a quota immigrant, if the fine was imposed for bringing a quota immigrant the visa in whose immigration visa specified him as being a non-quota immigrant.

The Immigration Rules of March 1, 1927, provide in part:

RULE 3.—PRIMARY INSPECTION AND DETENTION

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Subdivision F.—Immigration and passport visas

PARAGRAPH 1.—No immigrant, whether a quota immigrant or non-quota immigrant, of any nationality shall be admitted to the United States unless such immigrant shall present to the proper immigration official, at the port of arrival, an immigration visa duly issued and authenticated by an American consular officer: *Provided,* That (a) aliens who have been previously lawfully admitted to the United States and who are returning from a temporary visit of not more than six months to Canada, Newfoundland, Bermuda, St. Pierre, Miquelon, Mexico, and islands included in the Bahama and Greater Antilles groups, or such aliens who are returning from a temporary visit to any other foreign country and who are in

possession of a permit to reenter the United States issued in accordance with the provisions of section 10 of the immigration act of 1924, and (b) children born subsequent to the issuance of an immigration visa to the accompanying parent, if otherwise admissible, shall be permitted to enter the United States without an immigration visa.

* * * * *

Subdivision I.—Nonquota status proof

PAR. 2.—An alien claiming to be nonquota immigrant by reason of having been previously lawfully admitted to the United States and to be returning from a temporary visit abroad shall be required to establish such fact to the satisfaction of the examining immigration official: *Provided,* That the presentation of a return permit duly issued to such alien pursuant to the provisions of section 10 of the immigration act of 1924 shall be deemed prima facie evidence of the fact that such alien is returning from a temporary visit abroad.

Executive Order No. 4813, of February 21, 1928, provides in part:

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Immigrants: They must present immigration visas, quota or non-quota, in accordance with the requirements of the Immigration Act of 1924, except—

(1) Children born subsequent to the issuance of the immigration visa of the accompanying parent. (Sec. 13 (a) (1), Immigration Act of 1924.) Such children are not required to present documents of any kind;

(2) Aliens who have previously been admitted legally into the United States, have departed therefrom and returned within six months, not having proceeded to countries other than Canada, Newfoundland, St. Pierre, Miquelon, Bermuda, Mexico, Cuba, and other Islands included in the Bahama and Greater Antilles groups, are not required to present passports, visas, or permits to reenter.

(3) Aliens, other than those specified in (2) above, who have previously been admitted legally into the United States, have departed therefrom, and are returning from a temporary visit abroad, may present, in lieu of immigration visas, permits to reenter, issued pursuant to Section 10 of the Immigration Act of 1924.

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SUPREME COURT OF THE UNITED STATES.

No. 343.—October Term, 1933.

Hamburg-American Line, Petitioner,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[March 5, 1934.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Philip O'Reilly, a native of Ireland and resident in the United States, returned in October, 1928, on plaintiff's vessel, from a temporary visit abroad. He had neither an unexpired immigration visa nor a permit to reenter. On his arrival, the immigration officers ordered his exclusion, but he was eventually admitted by the Secretary of Labor. Later, the Secretary of Labor fined the plaintiff in the sum of $1000 for bringing the alien to the United States. Having paid under protest, plaintiff brought this action to recover the amount of the fine upon the ground that it was illegally imposed. Judgment dismissing the complaint on the pleadings was affirmed by the Circuit Court of Appeals. 65 F. (2d) 369. This Court granted certiorari, in view of the conflicting ruling in the Ninth Circuit. *Rederiaktiebolaget Nordstjernen* v. *United States*, 61 F. (2d) 808.

The fine was imposed under Section 16 of the Immigration Act of 1924, 43 Stat. 153, 163; U. S. C. 216.[1] The provision is explicit

[1]This section provides:

"Sec. 16. (a) It shall be unlawful for any person, including any transportation company, or the owner, master, agent, charterer, or consignee of any vessel, to bring to the United States by water from any place outside thereof (other than foreign contiguous territory) (1) any immigrant who does not have an unexpired immigration visa, or (2) any quota immigrant having an immigration visa the visa in which specifies him as a non-quota immigrant.

"(b) If it appears to the satisfaction of the Secretary of Labor that any immigrant has been so brought, such person, or transportation company, or the master, agent, owner, charterer, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each immigrant so brought, and in addition